

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY CUSTOMS APPEAL NO.70 OF 2007

The Commissioner of Customs
Import JNMCH Nhava Sheva .. Appellant

vs

Balu India .. Respondent

Mr.Parag Vyas with Mr.Y.R.Mishra for
Appellant Nankani with Mr.M.M.Boya for Respondent
Mr.Vikram

CORAM : F.I.REBELLO AND
R.S.MOHITE, JJ

DATED : 30TH NOVEMBER, 2007

P.C.

1. The revenue has preferred this appeal against the order of CEGAT dated 13th October, 2005.

2. The appellants had imported a consignment of 132 pieces of used diesel engines and claimed exemption under Notification No.204 of 1992 dated 19th May 1992 against advance licence dated 3rd October 1994. The appropriate officer in terms of the advance licence did not levy any duty at the time of importation of the goods as it was claimed that the goods were for re-conditioning and re-export. As it was found that the goods were not viable for reconditioning, they approached DGFT for cancellation of the licence and the licence was cancelled.

3. The tribunal noted that the question therefore would be whether the goods which at the time of clearance from the Customs House claimed exemption

under Notification No.204 of 1992 customs were made according to the law duty free or not.

4. The licence was subsequently cancelled and proceedings were initiated and penalty imposed under section 111 (d) of the Customs Act, 1962.

5. The learned tribunal noted that an appeal had been preferred by the respondents before the CEGAT against the order of confiscation and penalty and the tribunal vide order dated 4th June 1997 had set aside the order of confiscation and penalty and the matter was remanded back to the Commissioner. However, that part demanding customs duty of Rs.3,87,000/- was not a set aside. The tribunal then proceeded to hold that considering the aforesaid circumstances of the case the impugned order is set aside. The appellants are allowed to re-export the imported goods within 3 months on failure, the consequences as set out therein would follow.

6. The revenue has preferred an appeal against the said order. Section 111 (d) reads as under :

111. " Confiscation of improperly imported goods etc. "

(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force.

The goods were imported under a valid licence

and custom duty imposed and paid. The impugned order of the tribunal notes that part of the order demanding customs duty was not set aside. In the light of the above, in our opinion, questions of law as framed would not arise. Section 111 (d) would be inapplicable to the facts of the present case.

In the light of that, Appeal is dismissed.

There shall be no order as to costs.

(F.I.Rebello, J)

(R.S.Mohite, J)